Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

in the Supreme Court of the United States

CASE NO. [redacted]

74-320

DADE COUNTY, a political subdivision of the State of Florida; R. RAY GOODE, as County Manager of Dade County, Florida; A. H. BLAKE, as Acting Tax Assessor of Dade County, Florida; R. K. OVERSTREET, as Tax Collector of Dade County, Florida; and J. ED STRAUGHN, Director, Department of Revenue, State of Florida,

Petitioners,

vs.

MARINE EXHIBITION CORPORATION, a Florida corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

STUART SIMON
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MIAMI REVIEW — 371-4853 — 377-3721

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CASE NO. _____

DADE COUNTY, a political subdivision of the State of Florida; R. RAY GOODE, as County Manager of Dade County, Florida; A. H. BLAKE, as Acting Tax Assessor of Dade County, Florida; R. K. OVERSTREET, as Tax Collector of Dade County, Florida; and J. ED STRAUGHN, Director, Department of Revenue, State of Florida,

Petitioners,

vs.

MARINE EXHIBITION CORPORATION, a Florida corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Petitioners, the Dade County taxing authorities, pray that this Court issue a writ of certiorari to review the judgment of the District Court of Appeal of Florida, Third District, entered in *Dade County etc., et al v. Marine Exhibition Corporation*, 296 So.2d 652 (3d D.C.A., Fla. 1974)[1]

JURISDICTION

The judgment of the District Court of Appeal of Florida, Third District, was entered on June 25, 1974. No rehearing was applied for. The jurisdiction of this Court is invoked under 28 U.S.C.A. §1257(3).

QUESTIONS PRESENTED

Can the Miami Seaquarium be exempted from ad valorem taxation on the basis of the use it makes of its property, while other private tourist attractions which put their property to the same use as the Seaquarium are taxed?

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provision involved is *U.S. Const.* amend. XIV §1 "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT

Marine Exhibition Corporation, a private corporation for profit, leases county-owned land and operates the

[1]A copy of the state appellate court opinion sought to be reviewed comprises pages 1-2 of the Appendix hereto.

Miami Seaquarium thereon as a tourist attraction (R. 108-109).

For 1972, the leasehold interest comprising the Seaquarium was taxed (R. 108-109).

The Seaquarium filed suit seeking exemption (R. 1-11).

By way of affirmative defense, the local taxing authorities averred that the exemption sought would amount to preferential tax treatment in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution (R. 106).[2]

In opposition to a motion for summary judgment, the tax assessor testified (by affidavit):

1. That other private tourist attractions in Dade County, such as the Miami Serpentarium, the Monkey Jungle, the Orchid Jungle and the Parrot Jungle, which made the same use of their property as the Seaquarium made of its property, were taxed; and

2. That over 23% of the total value of all property located in Dade County was exempted from taxation in 1972.

(R. 109)[3]

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[2]Page 3, Appendix hereto, *infra*.

[3]Pages 4-5, Appendix hereto, *infra*.

The trial court granted summary judgment declaring the leasehold interest comprising the Seaquarium to be exempt from taxation (R. 219-220).

The local taxing authorities appealed to the District Court of Appeal of Florida, Third District, assigning as error the trial court's entry of summary judgment (R. 222). The appellate court held that different treatment of members of the same class did not preclude summary judgment.

This petition for writ of certiorari ensued.[4]

REASONS FOR GRANTING THE WRIT

The decision below forces the local taxing authorities to participate in the denial of equal protection of the laws. The Seaquarium was judicially exempted from taxation on the basis of the use it made of its property.[5] All other private tourist attractions which made the same use of their properties as the Seaquarium made of its property were taxed. The opinion below, on its face, treats members

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[4]Petitioners have also sought certiorari from the Florida Supreme Court to review the decision below, *Dade County v. Marine Exhibition Corp.*, (Florida Supreme Court Case No. 45,923), (petition for certiorari filed July 25, 1974). Under Florida law, if the Supreme Court of Florida holds that it is without jurisdiction to entertain the petition for certiorari, the District Court of Appeal becomes the highest court from which a decision could be had. *See, Fla. Const.*, Art. V §3(b) 3; Florida Appellate Rule 4.5 c (6); *Ansin v. Thurston*, 101 So.2d 808, 810 (Fla., 1958). *Cf. Williams v. Florida*, 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446, 449, note 5. For this reason, petitioners have contemporaneously filed with their petition, a motion to defer consideration of petition pending the decision of the Supreme Court of Florida on the issue of its jurisdiction.

[5]Under Florida law, exemptions from ad valorem taxation are predicated upon use. *Straughn v. Camp*, 293 So.2d 689 (Fla., 1974).

of the same class differently. There is no reasonable basis for treating the Seaquarium differently from the Miami Serpentarium, the Parrot Jungle, the Orchid Jungle, the Monkey Jungle or any other private tourist attraction in greater Miami. *Cf. Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 93 S.Ct. 1001, 35 L.Ed.2d 351, (1973); *United States v. Detroit*, 355 U.S. 466, 78 S.Ct. 474, 2 L.Ed.2d 424, (1958).

For the tax year involved in this case, the cumulative effect of exemptions on the property tax base for Dade County is staggering — almost one quarter of the property in the county (23%) was exempted. There was 14.4 billion dollars' worth of property in the county in 1972 — 3.4 billion dollars' worth of which was exempted (R. 109).[6]

Florida has judicially recognized that exemptions "cast a greater burden on other taxpayers." *State ex rel. Miller v. Doss*, 146 Fla. 752, 2 So.2d 303 (1941). The opinion below increases this already substantial burden by requiring members of the same class to be treated differently with no reasonable basis therefor.

Speaking for this Honorable Court on the issue of taxability of leasehold interests in government property, Mr. Justice Holmes wrote in *Trimble v. Seattle*, 231 U.S. 683, 689, 34 S.Ct. 218, 219, 58 L.Ed. 435 (1914):

> "If these leaseholds are not taxable, they are a favored class of property; for ordinarily leaseholds are taxed even if they are lumped and included in the value of the fee. When an interest

[6]Pages 4-5, Appendix hereto, *infra*.

> in land, whether freehold or for years, is severed from the public domain and put into private hands, the natural implication is that it goes there with the ordinary incidents of private property, and therefore is subject to being taxed."

The holding below is in direct conflict with the opinion of this Court.[7]

[7]The Seaquarium's motion for summary judgment against the local taxing authorities was granted. The trial court can enter judgment against the movant where the opposing party is entitled to judgment as a matter of law. *Calpinetta v. Schields*, 70 So.2d p. 573 (Fla., 1954); *Morrissey v. Curran*, 423 F.2d 393 (2d Cir., 1970), *cert. denied*, 399 U.S. 928, 90 S.Ct. 2245, 26 L.Ed.2d 796; 48 ALR 2d 1188.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

STUART L. SIMON

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Dade County Attorney
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Miami, Florida 33130

R. A. CUEVAS, JR.

R. A. Cuevas, Jr.
Assistant County Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that 3 true and correct printed copies of the foregoing Petition for Writ of Certiorari to the District Court of Appeal of Florida, Third District were mailed this 18 day of September, 1974, to WOODROW M. MELVIN, JR., ESQUIRE, Mershon, Sawyer, Johnston, Dunwody & Cole, 1600 First National Bank Building, Miami, Florida 33131, Attorneys for Respondent.

STUART L. SIMON

STUART SIMON
Dade County Attorney

R. A. CUEVAS, JR.

R. A. Cuevas, Jr.
Assistant County Attorney

APPENDIX

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1974

CASE NO. 73-995

DADE COUNTY, etc., et al.,

Appellants,

vs.

MARINE EXHIBITION CORP.,
a Florida corporation,

Appellee.

Opinion filed June 25, 1974.

PER CURIAM.

The appellant is Dade County, Florida. It appeals a summary final judgment declaring that the leasehold interest of the Marine Exhibition Corporation is not subject to taxation. The Marine Exhibition Corporation is the operator of the Miami Seaquarium. The corporation obtained the property in 1954 upon a lease from Dade County after Dade County had secured the land from the State. The deed provided that the County was to use the land for a public purpose. Pursuant to this provision, the County leased the land for a marine exhibit. The County agreed that the leasehold interest would not be taxed unless the laws of the State required it to be, and no taxes were levied until 1969. The tax here concerned is for the year 1972.

In 1969, the Seaquarium property was exempted by the Board of Equilization and has been exempted as to the 1970 and 1971 taxes by order of the circuit court.

The appellant maintains that a genuine issue of material fact exists as to whether or not the property was on January 1, 1972 used for a public purpose. The only factual matter relied upon to create this issue is the affidavit of the then acting tax assessor of Dade County, as follows:

* * *

> "5. The predominant use made by the Marine Exhibition Corporation of the subject leasehold in 1972 was for a private, profit-making venture. More specifically, the vast majority of those members of the public who visited the Miami Seaquarium paid a substantial admission fee, the predominant portion of which inured to the private benefit of the Marine Exhibition Corporation. In this sense, the operation of the subject leasehold comprising the Miami Seaquarium is no different than other privately owned tourist attractions located in Dade County, Florida, which were not tax exempt for 1972 as: the Miami Serpentarium, the Monkey Jungle, the Orchid Jungle, the Parrot Jungle."

* * *

The affidavit is insufficient to raise an issue. The fundamental questions presented by this case have been answered by the Supreme Court of Florida in Dade County v. Pan American World Airways, Fla. 1973, 275 So.2d 505.

Affirmed.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR DADE COUNTY (Gen. Jur. Div.)

NO. 72-23072

MARINE EXHIBITION CORP.,
a Florida corporation, Plaintiff,

vs.

DADE COUNTY,
a political subdivision of the State of Florida, et al.,
Defendants.

DEFENDANTS' ANSWER TO COMPLAINT

Defendants answer the complaint filed herein as follows:

* * *

11. By way of affirmative defense, they state that the exemption sought by the plaintiff herein amounts to preferential tax treatment and would be violative of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States.

WHEREFORE, defendants pray that this cause be dismissed as to them with costs to be assessed against the plaintiff.

STUART SIMON
County Attorney
1626 Dade County Courthouse
Miami, Florida 33130

By: _____
R. A. Cuevas, Jr.
Assistant County Attorney

[CERTIFICATE OF SERVICE OMITTED]

[TITLE OMITTED]

AFFIDAVIT OF A. H. BLAKE

BEFORE ME, the undersigned authority, personally appeared A. H. BLAKE, who being first duly sworn, deposes on his oath and says:

1. I am over 21 years of age and otherwise sui juris.

2. I am currently employed by Dade County as Tax Assessor. As of January 1, 1972, I was Acting Tax Assessor.

3. As Acting Tax Assessor, I was charged with overall responsibility for determining the taxability of all property located within Dade County.

4. I am familiar with the financial operation and actual use made during the 1972 tax year of the subject leasehold comprising the Miami Seaquarium.

5. The predominant use made by the Marine Exhibition Corporation of the subject leasehold in 1972 was for a private, profit-making venture. More specifically, the vast majority of those members of the public who visited the Miami Seaquarium paid a substantial admission fee, the predominant portion of which inured to the private benefit of the Marine Exhibition Corporation. In this sense, the operation of the subject leasehold comprising the Miami Seaquarium is no different than other privately owned tourist attractions located in Dade County, Florida, which were not tax exempt for 1972 such as: the Miami Serpentarium, the Monkey Jungle, the Orchid Jungle, the Parrot Jungle.

6. For the 1972 tax year, the total value of real property, personal property, railroad and telegraph property located in Dade County was $14,419,981,729.00. The total value of exempt property for all exemptions allowable under Florida Statutes for the 1972 tax year was $3,406,234,031.00. The total value of taxable property in Dade County for the 1972 tax year was the difference between the above two figures: $11,013,747,698.00.

FURTHER AFFIANT SAYETH NOT.

/s/ A. H. Blake

A. H. BLAKE
Tax Assessor of Dade County

Sworn to and subscribed before
me on this 29 day of May, 1973.

/s/ Hazel Lee Pearsall

NOTARY PUBLIC
State of Florida at Large
My commission expires: Feb. 8, 1976

[CERTIFICATE OF SERVICE OMITTED]